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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/532,606	04/25/2005	Katsuhiko Kumakura	043888-0370	5717
20277	7590	09/04/2007	EXAMINER	
MCDERMOTT WILL & EMERY LLP			PICKETT, JOHN G	
600 13TH STREET, N.W.				
WASHINGTON, DC 20005-3096			ART UNIT	PAPER NUMBER
			3728	
MAIL DATE		DELIVERY MODE		
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/532,606	KUMAKURA ET AL.	
	Examiner	Art Unit	
	Greg Pickett	3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 25 April 2005.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-9 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 25 April 2005 is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>4/25/05</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Specification

1. The abstract of the disclosure is objected to because it contains multiple paragraphs. Correction is required. See MPEP § 608.01(b).

Drawings

2. Figure 12 should be designated by a legend such as --Prior Art-- because only that which is old is illustrated. See MPEP § 608.02(g).

Corrected drawings in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action.

The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 6 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 6 recites the limitation "the side rims" in line 3. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

4. Claims 1-3 and 5-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Harding (US 4,512,474) in view of Hartley et al (US 5,143,215), Shields (US 4,499,353), and Krzyzanowski (US 3,556,292).

Claim 1: Harding discloses a commodity package comprising a holding body 10, a housing portion 11/12, first recess 14, second recess 15, first brim 16, second brim 17, and bending portion 13. Harding lacks, or does not expressly disclose the hanging member with hole, or the cutting portions of differing heights.

Hartley teaches a hanging member 25 with a hole and interposed between housing portions of a package (see Figure 12) for providing product information. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the package of Harding with a hanging member interposed between the brim portions as taught by Hartley in order to provide product information to the consumer.

As to the cutting portions, Shields suggests offset knobs 58/60 for assisting in manual opening a package (see Col. 3, lines 17-23). Krzyzanowski teaches forming offset features in a hanging package by providing cutting portions 20/11 at differing heights to enable manual tearing (see for example Figure 4). It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the package of Harding-Hartley with cutting portions at differing heights as taught by Krzyzanowski in order to form opening tabs as suggested by Shields.

Claim 2: Harding teaches the brim portions 16/17 in a plane with housing portions on either side, and Hartley teaches interposing the hanging member between the brim portions. Harding-Hartley-Shields-Krzyzanowski, as applied to claim 1 above, discloses the claimed arrangement.

Claim 3: Shields teaches offset knobs 58/60.

Claim 5: Harding discloses the claimed projection 19 and depression 20.

Claim 6: Harding discloses folding back portions (line portions on either side of bending portion 13; see discussion of claim 8 below).

Claim 7: Harding discloses recesses (portions on either side of projection retaining connectors 19/20). Hartley teaches shaping the hanging member to fit the interior package (see Figure 12). To modify the hanging member with projections to fit within the depressions of Harding as claimed would entail a mere change in shape of the hanging member to fit the interior package and yield only predictable results; such a modification would have been obvious to one of ordinary skill in the art. A change in form or shape is generally recognized as being within the level of ordinary skill in the art, absent any showing of unexpected results. *In re Dailey et al.*, 149 USPQ 47.

Claims 8 and 9: Harding discloses bending portion 13 with a bottom portion and a pair of line portions on either side (see Figure 1) for folding back the holding body housing portions 11/12 such that the recesses 14/15 face each other. Harding is capable of vertical placement.

5. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Harding-Hartley-Shields-Krzyzanowski as applied to claim 5 above, and further in view of Mohs et al (US 4,739,883).

Harding-Hartley-Shields-Krzyzanowski, as applied to claim 5 above, discloses the claimed invention except for the holes for the projections in the hanging member.

Mohs teaches holes 92 in hanging member 12 for secure retention of the hanging member, and for said purpose, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide holes in the hanging member of Harding-Hartley-Shields-Krzyzanowski

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Applicant is respectfully reminded of their duty to disclose information material to patentability as defined under 37 CFR 1.56.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Greg Pickett whose telephone number is 571-272-4560. The examiner can normally be reached on Mon-Fri, 11:30 AM - 8:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 571-272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3728

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Greg Pickett/
Examiner
Art Unit 3728